IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

THURSDAY, THE 15TH MARCH 2007 / 24TH PHALGUNA 1928

WP(C).No. 8742 of 2007(N)

PETITIONER:

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1. SHINTO PAUL, AGED 29 YEARS, S/O PAULOSE,
KUNNAMPURATH HOUSE, MURICKASSRY P.O., IDUKKI.

2. JACOB RAJ JOSE, AGED 31 YEARS, S/O JOSEPH,
THAYYIL HOUSE, PATHIRAPPILLY P.O., ALAPPUZHA.

BY ADV. SRI.T.O.XAVIER
SRI.K.P.RAMACHANDRAN (THIRUMARADI)
SMT.SONIYA.M

RESPONDENTS:

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1. THE GOVERNMENT OF KERALA, REP.BY ITS SECRETARY,
EXCISE DEPARTMENT, THIRUVANANTHAPURAM.

2. EXCISE COMMISSIONER, COMMISSIONER OF EXCISE,
PUBLIC OFFICE BUILDINGS, THIRUVANANTHAPURAM.

3. KERALA STATE PUBLIC SERVICE COMMISSION, REP.
BY ITS SECRETARY, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.BIJOY CHANDRAN R1&R2
SRI.P.C.SASIDHARAN R3

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.K.DENESAN, J

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W.P.(C)NO. 8742 of 2007

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Dated this the 15th day of March, 2007

JUDGMENT

The petitioners are candidates included in the rank list published by the third respondent Commission for appointment to the post of Excise Inspectors. According to the petitioners, vacancies in the post of Excise Inspectors shall be filled up based on the method prescribed in the special rules and based on the percentage fixed for the respective categories against arising vacancies. That means the percentage prescribed by the special rules for the respective categories, namely, the direct recruits and the promotees shall have to be applied to arising vacancies and not to the cadre strength.

2. This Court had occasion to consider the merit of similar contentions raised by the parties in respect of the very same rules. In W.A.1085/2000, a Division Bench of this Court affirmed

the view taken by the single bench in **Seethilal v State of Kerala** (2000(2) KLT 475) and held that the ratio shall be applied to the cadre strength and not to arising vacancies. In rendering the above judgments this court was guided by the ratio of the judgment of the apex Court in **Prakash v. Kurien** (1999 (2) 710 (SC). I had occasion to consider the effect of Rule-5 of Part II of Kerala State and Subordinate Service Rules in the case of another category of posts and to hold that the percentage of vacancies shall be applied to the cadre strength. In **Prakash v V.M.Kurien** (1999(2) KLT 710(SC), the apex Court held that Note-(3) applied to all special rules, whenever a ratio or percentage is prescribed in the rules. It was further held that the ratio or percentage will have to be computed on the cadre strength of the post to which the recruitment is to be made and not on the basis of the vacancies existing at that time. Rule-5 deals with the special rules which provide for filling up of the vacancies to any service, class or category by direct recruitment and by transfer. The intention of the legislature is very clear from the incorporation of the Note (3) of Rule 5. The result would be

that as far as the earmarking of posts for direct recruits, transferees and promotees will have to be done based on the cadre strength apportioned between the respective categories as per the ratio or percentage prescribed by the Special Rules. Working out the ratio or percentage, based on the number of vacancies will not be in accordance with the scheme of the statute.

3. The relief prayed for by the petitioner for a direction to the second respondent to fix the number of vacancies for direct recruits reserving every 4th vacancy of that category is therefore liable to be rejected. I do so. The contention that the proviso to Rule 2 of Ext.P2 Special Rules was not considered by the Division Bench (cited supra) has, therefore, no merit. The said contention of the petitioner conveniently forgets the object and purpose behind the amendment of Rule 5 of the General Rules by introducing Note (3), which fact has been taken note of by the apex Court in Prakash vs. Kurien (cited supra).

4. The apex Court has considered the effect of note-3 of Rule-5 of KS&SSR and has authoritatively pronounced on the very question that is being agitated here. The writ petition is without merit. Therefore, dismissed.

K.K.DENESAN, JUDGE

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